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6 **UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

7 CHRISTINE JEAN MACARIO PRESTON

Case No. \_\_\_\_\_

8 *Plaintiff,*

9 WILLIAM P. BARR, Attorney General  
of the United States; UNITED  
10 STATES CITIZENSHIP AND  
IMMIGRATION SERVICES; CHAD  
11 F. WOLF, Acting Secretary of the  
Department of Homeland Security;  
12 KENNETH T. CUCCINELLI, Acting  
Director of the United States  
13 Citizenship and Immigration Services;  
ANNE ARRIES CORSANO, Director  
14 USCIS Seattle District (41); STEVEN  
B. CORLEY, Field Office Director of  
15 the USCIS Anchorage Field Office

**COMPLAINT FOR  
DECLARATORY RELIEF  
AND REVIEW OF AGENCY  
ACTION UNDER THE  
ADMINISTRATIVE  
PROCEDURE ACT 5 U.S.C.  
701 Et seq.**

16 *Defendants*  
17

18 COMES NOW, Christine Preston and, via the undersigned counsel, requests  
19 relief from the Court as follows:  
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21 **I. INTRODUCTION**

22 1. Plaintiff Christine Jean Macario Preston (Ms. Preston) brings this  
23 action against the April 29, 2020 denial, by the United States Citizenship and

1 Immigration Services (USCIS), of her I-485 application to adjust status to that of a  
2 Lawful Permanent Resident (LPR) under section 245(a) of the Immigration and  
3 Nationality Act (“INA”). USCIS and others, (collectively the Agency) acting on its  
4 behalf, denied Ms. Preston’s application by improperly finding she was inadmissible  
5 as someone who has falsely claimed to be a citizen of the United States in order to  
6 obtain any benefit under the law. *See* INA § 212(a)(6)(C)(ii).

7         2.       The Agency based its decision upon three job applications that were  
8 auto-populated with information found in Ms. Preston’s USAJOBS internet profile.  
9 In the profile, Ms. Preston entered that she was not a citizen or national of the  
10 United States and then right below, in the box for country of citizenship, she picked  
11 the United States. The USAJOBS website has an obvious glitch as it allows an  
12 individual to answer no to being a citizen or national of the United States, while  
13 also permitting him or her to select the United States as country of citizenship. Ms.  
14 Preston presented evidence of this obvious problem to the Agency; the Agency found  
15 that the plain reading of the statute made this point irrelevant.

16         3.       Ms. Preston also submitted evidence showing the prospective  
17 employer, to whom the job applications were directed, was at all times aware that  
18 Ms. Preston is not a citizen or national of the United States but rather is a citizen of  
19 the Philippines, and that she was applying for work authorization with the agency.  
20 Yet, instead of finding the obvious, namely that the USAJOBS computer  
21 programming created an issue that the employer was aware of from the start, the  
22  
23

1 Agency decided there was some sort of conspiracy in which an Army employee was  
2 knowingly receiving false employment applications from Ms. Preston.<sup>1</sup>

3 4. The totality of the evidence in the record shows that Ms. Preston never  
4 falsely represented to be a U.S. Citizen for any purpose or benefit under the INA or  
5 Federal or State law because, at worst, it was an error of which her prospective  
6 employer knew at all times.

7 5. Thus, Ms. Preston asks the Court to find that the Agency acted in an  
8 arbitrary and capricious manner which violated the Administrative Procedure Act  
9 (APA). At the same time, Ms. Preston requests that the Court order the Agency to  
10 rescind the April 29, 2020 decision denying her application for adjustment of status,  
11 reopen the adjustment proceedings, and adjudicate her application under INA §  
12 245(a).

## 13 II. PARTIES

14 6. Plaintiff CHRISTINE JEAN MACARIO PRESTON, is a national and  
15 citizen of the Philippines born on December 5, 1999. She was last admitted into the  
16 United States with a K-1 visa and has not departed the country since that time.

17 7. Defendant WILLIAM P. BARR, Attorney General of the United States,  
18 is sued in his official capacity. As United States Attorney General with ultimate  
19 authority over the United States Department of Homeland Security (DHS), Mr.  
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21 <sup>1</sup> “You included notes on the job application records indicating that the hiring agency knew that you  
22 were submitting false information at the time applications were submitted. USCIS finds that this  
23 claim does not absolve the fact that you clearly submitted applications on at least 3 occasions  
claiming United States citizenship.”

1 Barr has the authority to approve, deny, reopen, or perform any other action  
2 permitted by law or ordered by this Court regarding Ms. Preston's application.

3 8. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION  
4 SERVICES (USCIS) is a sub-division with the Department of Homeland Security  
5 (DHS), 6 U.S.C. § 271, and an "agency" within the meaning of the APA, 5 U.S.C. §  
6 551(1). USCIS is responsible for actual adjudication of adjustment of status  
7 applications and is the agency which adjudicated the application filed by Ms.  
8 Preston.

9 9. Defendant CHAD F. WOLF, Acting Secretary of Homeland Security, is  
10 sued in his official capacity. As Acting Secretary of Homeland Security, Mr. Wolf  
11 oversees USCIS, a subagency of DHS, and has the authority to approve, deny,  
12 reopen, or perform any other action permitted by law or ordered by this court  
13 regarding Ms. Preston's application.

14 10. Defendant KENNETH T. CUCCINELLI, Acting Director, U.S.  
15 Citizenship and Immigration Services, USCIS, is sued in his official capacity. As  
16 Acting Director of U.S. Citizenship and Immigration Services (USCIS) Mr.  
17 Cuccinelli oversees all USCIS District offices in the United States and has the  
18 authority to approve, deny, reopen, or perform any other action permitted by law or  
19 ordered by this court regarding the application filed by Ms. Preston.

20 11. Defendant ANNE ARRIES CORSANO, Director of the Seattle District  
21 of United States Citizenship and Immigration Services, is sued in her official  
22 capacity. As Director for District 41 of USCIS, she has jurisdiction over the USCIS  
23 field office in Anchorage, Alaska and has the authority to approve, deny, reopen, or

1 perform any other action permitted by law or ordered by this Court regarding Ms.  
2 Preston's application.

3 12. Defendant STEVEN B. CORLEY, Director of the Anchorage Field  
4 Office of U.S. Citizenship and Immigration Services, is being sued in his official  
5 capacity. In his position as Anchorage Field Office Director, Mr. Corley has the  
6 authority to approve, deny, reopen, or perform any other action permitted by law or  
7 ordered by this Court regarding Ms. Preston's application.

### 8 III. JURISDICTION AND VENUE

#### 9 A. Jurisdiction

10 13. Jurisdiction is proper under 28 U.S.C. § 1331. This action arises the  
11 Immigration and Naturalization Act, 8 U.S.C. §§ 1101 et seq., and its implementing  
12 regulations; the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and 28 U.S.C.  
13 § 2201(a), because this is a civil action seeking, in addition to other remedies, a  
14 declaratory judgment.

15 14. Jurisdiction is not precluded pursuant to 8 U.S.C. §1252 as this action  
16 does not involve review of a discretionary action of the agency but arises from  
17 questions under the Constitution and law of the United States.

18 15. Jurisdiction is not precluded under "sovereign immunity." Pursuant to  
19 5 U.S.C. § 702 of the APA, the United States has explicitly waived sovereign  
20 immunity over the plaintiffs' claims since the relief sought is other than money  
21 damages.

1 B. Venue

2 16. Venue in this judicial district is proper under 28 U.S.C. § 1391 because  
3 this is a civil action in which the defendants are, respectively, an agency of the  
4 United States and officer(s) of the United States acting in their official capacity, 28  
5 U.S.C. § 1391(e), the events giving rise to this action took place within this District  
6 in the geographical limits of the City of Anchorage, Alaska, 28 U.S.C. § 1391(b)(2),  
7 and Plaintiff resides in Anchorage, Alaska, 28 U.S.C. § 1391(c)(1).

8 IV. STANDING

9 17. The APA affords a right of review to a person who is “adversely  
10 affected or aggrieved by agency action.” 5 U.S.C. §702. The Agency’s improper  
11 denial of Ms. Preston’s application for adjustment of status (I-485) has adversely  
12 affected her ability to obtain legal residence in the United States. Ms. Preston thus  
13 falls within the APA’s standing provisions.

14 V. FINALITY AND EXHAUSTION

15 A. Finality

16 18. The March 23, 2020 constitutes final agency action under the APA  
17 because it is the denial of relief or its equivalent. U.S.C. §§ 551(13); 701(b)(2); 704.

18 B. Exhaustion

19 19. No exhaustion of administrative remedies is required since there is no  
20 federal statute or regulation that mandates an appeal to the agency of the decision.  
21 *Darby v. Cisneros*, 509 U.S. 137 (1993). Neither the INA nor implementing  
22 regulations at 8 C.F.R. § 103.3(a) requires an administrative appeal of the denial.  
23 Further, the only avenue for Ms. Preston is to file a motion to reopen or reconsider

1 with the Agency, and these motions are not requirements of administrative  
2 exhaustion. 8 U.S.C. § 1252(d)(1); *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th  
3 Cir. 2003).

#### 4 VI. STATUTE OF LIMITATIONS

5 20. This case is filed within the general six-year statute of limitations for  
6 civil actions brought against the United States under 28 U.S.C. § 2401(a). The  
7 Agency decision impugned is from April 29, 2020, well within the statutory period  
8 to bring the present action.

#### 9 VII. LEGAL BACKGROUND

##### 10 A. Adjustment of Status

11 21. Adjustment of Status to lawful permanent resident (LPR) is the  
12 procedure by which an individual in the United States is permitted to reside and  
13 work lawfully in this country. INA § 245(a); 8 U.S.C. § 1255(a).

14 22. Adjustment of status takes place by the filing of an application (I-485)  
15 with USCIS and, by a preponderance of the evidence, demonstrating that the  
16 applicant is admissible as an LPR. INA § 245(a); INA § 291; 8 U.S.C. § 1361; *Matter of*  
17 *E-M-*, 20 I&N Dec. 77 (BIA 1989).

18 23. Because adjustment of status is regarded as an admission, the  
19 inadmissibility charges of the INA are operational and an applicant is impeded from  
20 being admitted to lawful permanent residence if one such charge applies. *Matter of*  
21 *Agour*, 26 I&N Dec. 566 (BIA 2015).

1           24.     It is the burden of the applicant to prove that she is admissible, and  
2 not affected by a mandatory ground for denial of relief, by a preponderance of the  
3 evidence. 8 C.F.R. § 1240.8(d).

4           B. False Claim to U.S. Citizenship

5           25.     The INA classifies as inadmissible any person who makes a false claim  
6 of U.S. citizenship in order to obtain any benefit under federal or state law. INA §  
7 212(a)(6)(C)(ii).

8           26.     There is no waiver for inadmissibility resulting from a false claim to  
9 U.S. citizenship such that it is known as “immigration death.” INA § 212(a)(6)(C)(ii).

10          27.     To trigger inadmissibility, the claim must fall within the four corners  
11 of the statute. It must be made for a purpose or benefit under state or federal law, it  
12 must be false, and it must be for U.S. Citizenship. If the alleged claim does not meet  
13 one or more of these requirements, it does not support inadmissibility under INA §  
14 212(a)(6)(C)(ii).<sup>2</sup>

15          28.     The BIA has recognized the virtue of applying the principle of timely  
16 retraction when an individual “voluntarily and prior to any exposure of the  
17 attempted fraud corrected his testimony that he was an alien lawfully residing in  
18 the United States.” *Matter of M-*, 9 I&N Dec. 118, 119 (BIA 1960); *see also Matter of*  
19 *R-R-*, 3 I&N Dec. 823, 827 (BIA 1949). The timely retraction doctrine applies to a  
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21           <sup>2</sup> The BIA has interpreted INA § 212(a)(6)(C)(ii) not to require an element of intent, i.e., it need not  
22 be made ‘knowingly.’ *Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019). This interpretation is premised  
23 upon an incorrect construction which does not deserve deference under *Chevron U.S.A., Inc. v.*  
*Natural Resources Defense Council, Inc.*, 468 U.S. 837 (1984).



1 false claim to U.S. citizenship and stops said claim from rendering an alien  
2 inadmissible or deportable. *Valadez-Munoz v. Holder*, 623 F.3d 1304 (9th Cir. 2010);  
3 *Martinez v. Lynch*, 606 Fed. Appx. 344 (9th Cir. 2015).

#### 4 VIII. FACTUAL ALLEGATIONS

5 29. Ms. Preston, a citizen of the Philippines, came to the United States  
6 with a K-1 non-immigrant visa classification to marry her now-husband, Edward  
7 Preston, a U.S. citizen.

8 30. At all times since her entry to the United States, Ms. Preston has  
9 resided with her husband near Fort Greely, Alaska, where he is a civilian employed  
10 by the United States Army.

11 31. On December 31, 2018, Ms. Preston filed with USCIS the forms  
12 required for adjustment of status based upon her marriage to Mr. Preston.

13 32. Sometime before January 24, 2019, Ms. Preston completed an  
14 USAJOBS profile on the USAJOBS website.

15 33. The USAJOBS website profile allows an applicant to state that she is  
16 not a citizen or national of the United States yet still permits that same individual  
17 to choose the United States as country of citizenship.<sup>3</sup>

18 34. The USAJOBS site auto-populates job applications only using the  
19 “country of citizenship” information in the applicant’s profile. The resulting  
20 application(s) will automatically show the country of citizenship to be the United  
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22 <sup>3</sup> Why the USAJOBS software would allow for this is beyond understanding. The inclusion of the  
23 United States as a choice for “country of citizenship,” after an individual clearly denotes he is not a  
Citizen or National of the United States, is absurd and may only be described as a programing error.

1 States. This happens even when the applicant answers 'no' to the question of  
2 whether she is a citizen or national of the United States in the USAJOBS profile.

3 35. In filing out her USAJOBS profile, Ms. Preston indicated she was  
4 neither a citizen nor a national of the United States, but it would appear that on the  
5 following line she did not indicate the Philippines as her country of citizenship and  
6 chose United States from the list of countries available.

7 36. On January 24, 2019, February 5, 2019, and October 28, 2019, Ms.  
8 Preston applied to various positions via the USAJOBS portal. The positions were all  
9 at Fort Greely and were designated as open to the public on the USAJOBS site.

10 37. The USAJOBS site defines a job as "open to the public" when U.S.  
11 citizens and others, such as U.S. nationals and "persons who owe permanent  
12 allegiance to the United States," may also apply for the position.

13 38. Ms. Preston's applications were auto-populated from her USAJOBS  
14 profile with Ms. Preston's country of citizenship as 'United States.' Because of this,  
15 she and her husband took the job applications to the prospective employer, Ms.  
16 Jessica L. Smith, Director, U.S. Army Family and Morale, Welfare, Recreation at  
17 Fort Greely, Alaska.

18 39. At all times, Ms. Smith was aware Ms. Preston was a citizen of the  
19 Philippines, not the United States, and that she was in the process of obtaining her  
20 work permit from USCIS. On February 5, 2019, Ms. Smith, knowing Ms. Preston  
21 would need work authorization to be employed, provided Ms. Preston with a letter  
22 requesting that the Agency expedite the issuance of Ms. Preston's work permit.

1           40.     On February 27, 2019, Ms. Preston appeared for an appointment at the  
2 USCIS Anchorage Field Office to have her biometrics taken for her pending I-485  
3 and other applications. After that appointment Ms. Preston and her husband  
4 presented the request to expedite her work permit at the reception window at the  
5 Anchorage Field Office.

6           41.     At the window, Ms. Preston and her husband were mostly questioned  
7 as to how and why she obtained a job offer from the U.S. Army if she was not a U.S.  
8 citizen. Contrary to what the Agency decision states, at no time did Ms. Preston or  
9 her husband represent that she was a U.S. Citizen or that she had obtained the  
10 employment offer by claiming to be one. Furthermore, it is unclear how the  
11 February 27, 2019 window inquiry became part of the record in this case. The  
12 Agency did not place the Prestons under oath prior to questioning them on  
13 February 27, 2019 at the window counter.

14           42.     On October 29, 2019, the Agency conducted Ms. Preston's adjustment  
15 of status interview. At the time, Ms. Preston was six months pregnant, which was  
16 clear from her appearance. Ms. Preston felt badgered, interrogated, and subjected to  
17 significant abuse by the USCIS officer conducting the interview.

18           43.     The interviewing officer seemed more intent on having Ms. Preston  
19 state that she had worked in the U.S. without authorization or that she had falsely  
20 claimed to be a U.S. citizen than eliciting any information to the contrary.

21           44.     The interrogation of the six-months pregnant Ms. Preston took  
22 approximately three hours, from 11 A.M. to 2 P.M. The Agency recorded the  
23 interview. At one point during the interview, Ms. Preston had to excuse herself to go

1 to the restroom to vomit. Upon her return to the interview, the officer, clearly  
2 undeterred her by state, continued the questioning. The video of the interview is,  
3 and must be, within the record of proceedings.

4 45. The Agency did not give a decision on the adjustment of status  
5 application the day of the interview. Ms. Preston and her husband returned from  
6 Anchorage to Fort Greely.

7 46. On October 21, 2019, the Agency sent Ms. Preston a “Request for  
8 Further Evidence” (RFE). The RFE asked for a series of documents which Ms.  
9 Preston produced on a timely basis. These documents included the USAJOBS  
10 applications as well as documents showing Ms. Preston answered that she was not  
11 a U.S. citizen in the USAJOBS profile.

12 47. On March 19, 2020, Ms. Preston received a Notice of Intent to Deny  
13 (NOID). In her response, she provided a letter from Ms. Smith dated April 17,  
14 2020. The letter declared that the citizenship statement in the job applications was  
15 a software error of which Ms. Smith was aware, that she instructed Ms. Preston to  
16 proceed with the job applications notwithstanding said error, and that at no time  
17 did she consider Ms. Preston to be providing false information regarding her  
18 citizenship in order to obtain employment.<sup>4</sup>

19 48. On April 29, 2020, the Agency denied Ms. Preston’s application to  
20 adjust status, finding that she was inadmissible under INA § 212(a)(6)(C)(ii) and  
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22 <sup>4</sup> The Agency’s position seems to be that Ms. Smith, knowing Ms. Preston was not a U.S. citizen,  
23 knowingly allowed her to present job applications containing “false information” in order to obtain  
employment.

1 that she would be placed in removal proceedings if she did not leave the United  
2 States immediately.

3 49. In its decision, the Agency stated that Ms. Preston falsely claimed to  
4 be a U.S. citizen in order to secure employment. The Agency went on to state that  
5 Ms. Preston had presented evidence “indicating that the hiring agency new [sic]  
6 that you were submitting false information at the time these applications were  
7 submitted. USCIS finds that this claim does not absolve you of the fact that you  
8 clearly submitted applications on at least three occasions claiming United States  
9 citizenship.” See Agency Decision at Exhibit A.

10 IX. CAUSE OF ACTION – VIOLATION OF THE APA

11 50. Ms. Preston repeats, realleges, and incorporates the foregoing  
12 paragraphs as if fully set forth herein.

13 51. Ms. Preston has been aggrieved by an agency action covered by the  
14 Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., in that she was unlawfully  
15 denied adjustment of status to that of a permanent resident of the United States.

16 52. A decision is “arbitrary and capricious if the agency has entirely failed  
17 to consider an important aspect of the problem, offered an explanation for its  
18 decision that runs counter to the evidence before the agency, or is so implausible  
19 that it could not be ascribed to a difference in view or the product of agency  
20 expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,  
21 463 U.S. 29, 43 (1983).

22 53. In its decision, the Agency misconstrued the language of INA §  
23 212(a)(6)(C)(ii) by finding that a clerical error, made with no intent to deceive,

1 triggers a false claim to U.S. citizenship. The proper construction of INA §  
2 212(a)(6)(C)(ii) requires the claim to be “false.” Holding out that any claim,  
3 including one made in error, triggers INA § 212(a)(6)(C)(ii) inadmissibility renders  
4 superfluous the word *false* within the statute and presents significant  
5 contradictions with other parts of the INA. The Agency’s decision, based upon this  
6 erroneous interpretation, is not in accordance with the law.

7       54. The decision denying Ms. Preston’s application shows that the Agency  
8 ignored evidence within the record, did not have a rational explanation for the  
9 weight given to the evidence it did use, and chose to patently mischaracterize other  
10 evidence, in full contradiction of the law and its own regulations. In this, the Agency  
11 not only failed to follow its own regulations, but reached an implausible conclusion  
12 contrary to the evidence in the record.

13       55. The Agency failed to consider the doctrine of timely retraction as  
14 applied to Ms. Preston. The evidence in the record shows that, even if it were  
15 assumed Ms. Preston made a false claim under INA § 212(a)(6)(C)(ii), the doctrine  
16 of timely retraction would cure all of its deleterious effects, that is, unless the  
17 absurd theory set forth in the Agency’s decision, involving an alleged conspiracy by  
18 Ms. Preston, her husband, and possibly Ms. Smith at Fort Greely, is given credence.

19                                   X.    RELIEF REQUESTED

20       WHEREFORE Plaintiff requests the following relief:

21       A.     Declare Agency’s denial of Ms. Preston’s application to be unlawful and  
22 in violation of the Administrative Procedure Act;

1           B.     Order the Agency to immediately take any action by which Ms.  
2 Preston's application for adjustment of status may be adjudicated;

3           C.     Grant attorneys' fees and costs pursuant 28 U.S.C. §2412, 28 U.S.C.  
4 §1920, Fed. R. Civ. P. 54(d) and other authority; and

5           D.     Grant any other relief the Court deems appropriate and just.  
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7           RESPECTFULLY SUBMITTED on June 25, 2020.  
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10          By: s/ Lara Erin Nations

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